

(b)(3):10 USC 424;(b)(6)

From: [REDACTED]
Sent: Wednesday, March 19, 2014 5:15 PM
To: 'Michael Richter' [REDACTED] (b)(3):10 USC 424;(b)(6)
Cc: [REDACTED]
Subject: MATERIALS RECEIVED-- Pre Publication Review Request from Mike Richter (14-030)
Attachments: GTMO comedy and terror op ed for Proceedings_APPROVED.pdf
Signed By: (b)(3):10 USC 424;(b)(6)

Good Afternoon Mike,

I have received both the revised article and your submission for appeal. First, the revised article is approved for publication. As required, it reflects no substantive additions or changes in content beyond that originally directed.

Secondly, DIA Prepublication Review will redirect your appeal request to DoD's Office of Prepublication and Security Review (DOPSR). Your assigned action officer there will address the turnaround time concerning your appeal. As was the case with your original submission, because multiple organizations have equities represented in your article, the appeal must also be coordinated beyond DoD.

Finally, I must refer you to a Security POC for assistance to acquire a copy of your Non-Disclosure Agreement. I hope to have contact information available for you tomorrow.

Please contact me if you have questions.

Regards,

[REDACTED]
Prepublication Review
Office of Corporate Communications
Defense Intelligence Agency

(b)(3):10 USC 424;(b)(6)

(b)(3):10 USC 424;(b)(6)

-----Original Message-----
From: Michael Richter [REDACTED]
Sent: Monday, March 17, 2014 10:45 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Appeal Suspense provided.-- Pre Publication Review Request from Mike Richter (14-030)

Hi [REDACTED]

(b)(3):10 USC 424;(b)(6)

Please find attached my appeal (the pdf) and please let me know when I can expect a decision on my appeal.

Please also find attached a much-shortened version of the article that removes the allegedly offending information and which I hope to publish in the meantime. I hope you can quickly provide clearance for this short document.

I would appreciate it much if you could confirm receipt of these two documents.

Thanks, Mike

Comedy and Terror in Guantanamo Bay

By Michael Richter

(b)(6)

Word Count: 866

In October of 2012 I traveled to Guantanamo Bay on behalf of the New York City Bar Association to observe the pre-trial proceedings against Muhammad al Nashiri, the alleged mastermind behind the attack on the USS *Cole* (DDG-67) in 2000 that killed seventeen sailors and injured thirty-nine others. As a former intelligence officer with the Defense Intelligence Agency and the Office of the Director of National Intelligence, and now an attorney in private practice in Manhattan, I seemed a good choice, apparently, to report on an arduous case with no clear end in sight.

Al Nashiri is one of the most notorious detainees in American custody, known to some of his followers as the “Commander of the Sea” for the numerous naval attacks he allegedly masterminded. In addition to the *Cole*, he purportedly sent a suicide boat to destroy the USS *The Sullivans* (DDG-68) that foundered before reaching its target. He also reportedly attacked the French supertanker *Limburg*. One crewmember was killed, twelve were injured, and 90,000 barrels of oil spilled into the Gulf of Aden.

But al Nashiri told the US military tribunal in 2007 that he didn’t do it, and although bin Laden gave him, “[m]aybe half a million dollars,” that was just because they were friends. Likewise, it was a coincidence that he gave explosives to the

suicide bombers that attacked the *Cole*: "Maybe three or four boxes." In fact, he has nothing against anyone: "I'm not the enemy of anybody," he told the tribunal. "Even you, the Americans, I don't consider you as my enemy."

This was the knowledge I was armed with when I landed in Cuba, and I started to wonder, how, five years after he had been captured, are we not even at trial. As I attended one hearing after another I watched as simple issues that state and federal courts often resolve quickly languished without resolution.

On my first day al Nashiri refused to leave his cell. The defense argued that he should not be forced to attend and "listen day after day about the torture that was inflicted upon him." The prosecution objected because it feared that his non-appearance could form the basis for an appeal.

The debate went on for hours. As I told one of the defense attorneys later, this issue would have lasted ten minutes in a civilian court. He disagreed: "five minutes." Even the Judge got restless: "We probably could have done this much faster." Finally, the court ruled that al Nashiri must attend.

And then, at long last, he was there. "I thank you for letting me talk," he began. "I have been, for the last ten years, with nobody to hear what I have to say. Ten years." He was on the verge of tears. "But if you order the guards to bring me a bad chair... I have the right to leave this court." Al Nashiri also didn't like his ride: "I need a more comfortable vehicle to bring me here." One of the victim's family members in the viewing room shouted, "This is comedy hour!"

In February 2013, four months after later, they were still debating this, and as the Judge noted, "we're kind of going around in circles here." The defense also

revisited al Nashiri's ride: "During the transportation, apparently Mr. al Nashiri received some injuries to his wrist...He identified some red marks...He did seek medical attention. A corpsman did see him." This is indeed comedy hour.

The irony of this process is that some thought a military tribunal would be faster, and to those who think it is inadequate, the prosecutor has something to say to you: "First of all, those who think that this Commission is expedient...are just not paying attention." Indeed.

There is also considerable tension between the defense counsel and the Commission, the entity that manages the proceedings. As we were leaving Cuba, one of the Commission's officers told me it was outrageous that al Nashiri's civilian counsel was paid \$150 per hour. This was too good a fact not to share with that lawyer, who quickly corrected the number: "actually, it's \$145." Whenever I tell that to New York City lawyers – some of whom charge more than \$1,000 per hour – I always get a good laugh.

In state and federal courts routine disputes are often quickly resolved because there is a history of how to deal with them. This court, however, has virtually no history, and so much is done from scratch. It is also clear that the Judge is focused on creating a full record for the appellate courts, which will probably be the ultimate arbiter of al Nashiri's fate.

As I was leaving Cuba, I had an opportunity to ask the Chief Prosecutor how he felt about the proceedings. He replied that "If people look at this, they will see that it is fair." Perhaps, but it could be fair in a civilian court and faster, and maybe provide closure sooner to some of the victims' family members. I also asked a man

whose brother was killed on the *Cole* how he felt. He wasn't a lawyer or an intelligence officer. "I'm just trying to understand this," he said. Me too.

